



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/731,094	12/06/2000	David Salgado	D/A0598 XER 20373	9375

7590

11/30/2006

Albert P. Sharpe, III, Esq.
Fay, Sharpe, Fagan
Minnich & McKee, LLP
1100 Superior Avenue, 7th Floor
Cleveland, OH 44114-2518

EXAMINER

POON, KING Y

ART UNIT

PAPER NUMBER

2625

DATE MAILED: 11/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/731,094
Filing Date: December 06, 2000
Appellant(s): SALGADO ET AL.

MAILED

NOV 30 2006

Technology Center 2600

Joseph E. Waters
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on 9/8/2006 appealing from the Office action mailed 2/22/2006.

Art Unit: 2625

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,006,024	Heath et al	12-1999
5,019,963	Alderson	5-1991
5,742,829	Davis et al	4-1998

Art Unit: 2625

6,993,205	Lorie et al	1-2006
6,757,071	Goodman et al	6-2004
5,692,111	Marbry et al	11-1997

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The rejection of claims 1, 3-10 are based on Heath (US 6,006,034) in view of Alderson (US 5,019,963) or Heath (US 6,006,034) in view of Marbry et al (US 5,692,111).

Claims 1, 3-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heath (US 6,006,034) in view of Alderson (US 5,019,963) or Marbry et al (US 5,692,111).

Regarding claims 1, 7: Heath teaches a method for automatically updating a software on a computer (column 4, lines 50-59) comprising the steps of: (A) contacting a remote network location (column 4, lines 44-46) using a contact subroutine installed on said computer (the program of the application program that transmit a request signal, column 4, lines 35-40, note: it is well known in the art that a program consists of many subroutine to be called by the program for performing different functions, official notice), (B) comparing a first version of the software installed on the computer with a second version stored at the remote network location using a determining subroutine installed on said computer (column 4, lines 50-55, column 1, line 65), (C) downloading and installing the software from the remote location onto the computer if it is a more recent

Art Unit: 2625

version of the printer driver than said first version currently installed on the computer using a downloading and installing subroutine installed on said computer (column 2, lines 1-5, column 4, lines 55-60), and (D) uninstalling the version of the software previously stored on the computer using an uninstalling subroutine installed on said computer (column 6, lines 58-60).

Heath's invention is applied to modules in general (column 2, lines 60-63). Heath does not specify that the module is a printer driver.

Marbry and Alderson teach print driver software in a computer requires download and update (column 2, lines 5-11, Marbry; column 6, lines 57-66, column 2, lines 10-40, Alderson).

Heath teaches updating component/data file of an application program in general, column 1, lines 14-20, when a newer version of the data file is created.

Alderson, column 3, lines 60-65 teaches each computer program will consist of a number of data files. Column 6, lines 57-61, Alderson teaches a printer drive is an addressable (can be addressed by the host processor 11) data file of program 28, and the data file/component is updated according to a newer version, column 6, lines 37-47, column 1, lines 20-25 of the data file/component (column 6, lines 39-57). Also see column 5, lines 55-59 Alderson.

In order to understand the teaching of Heath and Alderson, one must know what is an application program as referred to in Heath and what is a printer driver as referred to as in Alderson.

Application program is designed for an end user, such as word processors, database system, and spreadsheets.

A printer driver is a software program designed to enable other programs, such as an application program to work with a particular printer without concerning themselves with the specific of the printer hardware and internal language. Application program can communicate properly with a variety of printer by using printer drivers, which handle all the subtleties of each printer so that the application program doesn't have to. Today graphical user interface (also an application program designed to interface with the end user) offer their own printer drivers, eliminating the need for an application program that run under the interface to have its own printer driver (see applicant's exhibit C).

Therefore, it would have been obvious to a person with ordinary skill in the art at the time the invention was made to have realized that the application program of Heath would have its own printer drivers or at least rely on a printer driver for printing with a particular printer; and would have been obvious to provide the application program of Heath with a printer driver for printing.

Since Alderson teaches a printer driver is a data file and was created with a version number (column 6, lines 40-55) and needed to be updated according to a newer version, it would have been obvious to a person with ordinary skill in the art at the time the invention was made to have modified Heath to include: update a printer driver data file for the application program of Heath using Heath method of updating data file.

Art Unit: 2625

It would have been obvious to a person with ordinary skill in the art at the time the invention was made to have modified Heath because: (a) it would have expand the use of Heath to create a bigger market, (b) it would have benefit the printer driver update process in the Internet environment (column 3, lines 20-25, column 4, lines 27-40, Heath); (c) it would have reduced the server processor power for updating clients' printer driver as taught by Heath, column 4, lines 25-27; (d) it would at least allowed the user of the application program of Heath to print with the most updated version of a printer driver; and (e) it would have prevented the application program printing with an incorrect or corrupted printer driver as taught by Heath, column 6, lines 45-55.

Regarding claim 3: Heath teaches in which each step is performed at a designated time or upon the occurrence of a designated event (inherently, all computer's program steps are performed at a designated time or upon the occurrence of a designated event) without prompting by the computer user (software upgrade is performed by a computer program, column 4, lines 34-40).

Regarding claim 4: Heath teaches in which the second version is stored at a location a system administrator (since a computer would not have any program stored without being loaded/supplied with the program; therefore, there must exist (inherent) a person that decides what is being stored in the computer) can control which versions of printer drivers are stored there.

Regarding claim 5: Heath does not teach in which the level of user interaction required in the updating process can be varied.

Art Unit: 2625

Alderson teaches in which the level of user interaction required in the updating process can be varied (the system can be programmed for allowing user to invoke updating to automatically, column 5, lines 15-20, column 7, lines 9-11).

Therefore, it would have been obvious to a person with ordinary skill in the art at the time the invention was made to have modified Heath to include: in which the level of user interaction required in the updating process can be varied.

It would have been obvious to a person with ordinary skill in the art at the time the invention was made to have modified Heath by the teaching of Anderson because it is always advantages (most user desires) to have a user to determine how many control a computer is having.

Regarding claim 6: Heath teaches in which the steps are performed without cessation or interruption (if the computer stops/interrupted from running the program of the computer system, the computer system (inherently) cannot perform program steps without the program) of the computer system or its programs during the execution of the steps.

Regarding claim 8: Heath teaches wherein the subroutines are program subroutines of the printer driver/application program (column 4, lines 35-40).

Regarding claim 9: Heath teaches in which the steps are performed without cessation or interruption (if the computer stops/interrupted from running the program of the computer system, the computer system (inherently) cannot perform program steps without the program) of the computer system or its programs during the execution of the steps.

Regarding claim 10: Heath does not teach the subroutines of claim 7 are part of a program distinct from the printer driver.

Anderson teaches the upgrade program are distinct from the printer driver (program 30 and 32 are different entities, fig. 4).

Therefore, it would have been obvious to a person with ordinary skill in the art at the time the invention was made to have modified Heath to include: subroutines of claim 7 are part of a program distinct from the printer driver.

It would have been obvious to a person with ordinary skill in the art at the time the invention was made to have modified Heath by the teaching of Anderson because it would have used one update software for all the software to be updated instead writing different update subroutine for each program.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heath (US 6,006,034) in view of Alderson (US 5,019,963) or Marbry et al (US 5,692,111) as applied to claim 1 above, and further in view of Davis et al (US 5,742,829).

Regarding claim 2: Heath does not teach in which the comparing step includes querying the second version of the driver by reading from the initialization file of the second version to determine its version.

Davis, in the same area of installing software, teaches when determining a newer version of a software, it is well known to perform a comparing step of: querying the second version of the driver by reading from the initialization file of the second version to determine its version (column 13, lines 50-60).

Art Unit: 2625

Therefore, it would have been obvious to a person with ordinary skill in the art at the time the invention was made to have modified Heath to include: a comparing step includes querying the second version of the driver by reading from the initialization file of the second version to determine its version.

It would have been obvious to a person with ordinary skill in the art at the time the invention was made to have modified Heath by the teaching of Davis because of the following reasons: (a) it would have allowed Alder's invention to be implemented in Microsoft environment, column 13, lines 20-30; and (b) using in a Microsoft environment would have allowed Alder's system to have many users because Microsoft is one of the biggest computer software company.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heath (US 6,006,034) in view of Alderson (US 5,019,963) or Marbry et al (US 5,692,111) as applied to claim 7 above, and further in view of Goodman et al (US 6,757,071).

Heath does not teach the printer driver is configured to be used with a xerographic print system.

Goodman teaches printing using xerographic print system requires a printer driver, (column 5, lines 10-25).

Therefore, it would have been obvious to a person with ordinary skill in the art at the time the invention was made to have modified Heath to include: printer driver is configured to be used with a xerographic print system.

Art Unit: 2625

It would have been obvious to a person with ordinary skill in the art at the time the invention was made to have modified Heath because (a) it would allowed the invention of Heath to be expanded, and (b) it would have benefit the xerographic printer driver updating process.

(10) Response to Argument

Appellant, on the top of page 4, brief, argues, Heath is specifically directed to (updating) application program, not print drivers; and there is no motivation to combine Heath with either Alderson or Marbry (brief, the bottom of page 4).

In reply: Heath, column 1, lines 5-10, states that the present invention relates to methods and systems for maintaining components of application programs in a client/server environment; Heath column 1, lines 10-20, further states: server on the network services the clients by providing program, files and data; an application program typically comprises a number of components each of which exists as a separately addressable file, and where each component is identified by a version number perhaps indicating its creation data. Therefore, any software/programs that typically comprises a number of components each of which exists as a separately addressable file, and where each component is identified by a version number indicating its creation data can use Heath method for updating the program.

Column 4, lines 50-58, Heath teaches client 22 stores a representation of the catalog file 26, which at least includes the updated list of components and version

Art Unit: 2625

numbers on the client, for a comparison in a subsequent version check. It can be seen that only the components which require updating are downloaded, and they are only downloaded when there is a need because the program is being accessed at the client. Also see column 1, lines 60-67, column 2, lines 1-5, Heath.

Alderson, column 3, lines 60-65 teaches each computer program will consist of a number of data files. Column 6, lines 57-61, Alderson teaches a printer drive is an addressable (can be addressed by the host processor 11) data file of program 28, and the data file/component is updated according to a newer version, column 6, lines 37-47, column 1, lines 20-25 of the data file/component (column 6, lines 39-57). Also see column 5, lines 55-59 Alderson.

In order to understand the teaching of Heath and Alderson, one must know what is an application program as referred to in Heath and what is a printer driver as referred to in Alderson.

Application program is designed for an end user, such as word processors, database system, and spreadsheets (see applicant's exhibit B).

A printer driver is a software program designed to enable other programs, such as an application program to work with a particular printer without concerning themselves with the specific of the printer hardware and internal language. Application program can communicate properly with a variety of printer by using printer drivers, which handle all the subtleties of each printer so that the application program doesn't have to. Today graphical user interface offer their own printer drivers, eliminating the

Art Unit: 2625

need for an application program that run under the interface to have its own printer driver (see applicant's exhibit C).

Therefore, it would have been obvious to a person with ordinary skill in the art at the time the invention was made to have realized that the application program of Heath would have its own printer drivers or at least rely on a printer driver for printing with a particular printer; and would have been obvious to provide the application program of Heath with a printer driver for printing.

Since Alderson teaches a printer driver is a data file and was created with a version number (column 6, lines 40-55) and needed to be updated according to a newer version, it would have been obvious to a person with ordinary skill in the art at the time the invention was made to have modified Heath to include: update a printer driver data file for the application program of Heath using Heath method of updating data file.

It would have been obvious to a person with ordinary skill in the art at the time the invention was made to have modified Heath because: it would at least allowed the user of the application program of Heath to print with the most updated version of a printer driver; and it would have prevented the application program printing with an incorrect or corrupted printer driver as taught by Heath, column 6, lines 45-55.

Note: the rejection is based on Heath in view of Alderson or Heath in view of Marbry, the discussion of Heath in view of Alderson does not requires the teaching of Marbry.

Appellant, on the bottom of page 4, argues that Alderson teaches the host compares the versions and uploads newer versions of the program to the workstation,

Art Unit: 2625

not the workstation themselves; and the proposed modification would change the operation of Heath (the prior art invention) being modified.

In response: The prior art invention being modified is Heath. Heath teaches comparing a first version of software data file stored on a computer system, by the computer system (client 22, column 4, lines 33-50, column 1, lines 65-67, column 2, lines 1-5), with the second version stored at the remote location (server, column 1, lines 65-67, column 2, lines 1-5) and download and install the second version of the software data file.

After the modification (see previous discussion), Heath's system would comparing a first version of printer driver data file of the application program stored on a computer system, by the computer system, with the second version stored at the remote location and download and install the second version of printer driver data file of the application program. It does not appear such modification would change the operation of Heath.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Conferees:

Conferees:

Edward Coles

Supervisory Patent Examiner

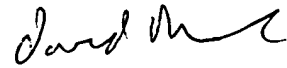
Art Unit 2625


EDWARD COLES
SUPERVISORY PATENT EXAMINER
FRONT LOBBY CENTER 2600

David Moore

Supervisory Patent Examiner

Art Unit 2625



DAVID MOORE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

King Y. Poon

Primary Examiner

Art Unit 2625



KING Y. POON
PRIMARY EXAMINER